and business of other states," and that "if a state, under the guise of exerting its police power, should make such exclusion or prohibition applicable solely to articles, of that kind, that may be produced or manufactured in other states, the courts would find no difficulty in holding such legislation to be in conflict with the Constitution of the United States." So in *Tiernan* v. *Rinker,* 102 U. S. 123, the Texas law of 1873, exempting from an "occupation" tax wine and beer manufactured in Texas, was held to be inoperative "so far as it makes a discrimination against wine and beer imported from other states. * * * A tax cannot be exacted for the sale of beer and wine when of foreign manufacture, if not exacted from their sale when of home manufacture." To the same effect, *Walling* v. *Michigan,* 116 U. S. 446. A great number of other decisions of the state courts announcing and affirming the invalidity of such legislation is collected in BLACK ON INTOXICATING LIQUORS, §§ 44, 79, and 17 ENC. OF LAW (2d ed.), 216. The more recent cases, also overlooked, in which similar questions have been involved, come to the same conclusion. In *State* v. *Ebey* (1902), 170 Mo. 497, a law exacting an inspection fee from manufacturers of beer for the sale thereof within the state which those manufacturing for export need not pay, was held unconstitutional. See, also, *State* v. *Bengsch* (1902), 170 Mo. 81. So an exception to a statute, not requiring a license to sell intoxicating liquors "in sales by the makers thereof of native wine or of cider manufactured in the Commonwealth of Massachusetts" was held invalid and void in *Commonwealth* v. *Petranich,* 183 Mass. 217.

Such legislation has been considered nugatory for several reasons. It is an unwarranted interference with interstate commerce; *Guy* v. *Baltimore,* supra; *Commonwealth* v. *Petranich,* supra: it denies the equal protection of the law guaranteed by the Fourteenth Amendment; *State* v. *Bengsch,* supra: and it unlawfully abridges the privileges and immunities of citizens of the United States; *McCreary* v. *State,* 73 Ala. 480.

Both reason and authority indicate that the conclusion of the Texas Supreme Court is erroneous.

DAMAGES FOR MENTAL SUFFERING UNACCOMPANIED BY PHYSICAL INJURY.—North Carolina has recognized for some time the right of a person to recover damages for mental anguish caused by the negligence of a telegraph company in failing to transmit or deliver a telegram, or in delaying its delivery, when the company had means of knowing that such failure would produce mental anguish. Usually the cases have involved the consideration of telegrams announcing serious illness or death. In the case of *Green* v. *W. U. Tel. Co.,* — N. C. —, 49 S. E. Rep. 165, it is held that mental anguish may result from failure to deliver other messages than those telling of sickness or death. Dr. Green telegraphed a friend in Columbia to meet his daughter, a girl of sixteen, who would reach Columbia at midnight. Through negligence the company failed to deliver the message, and upon the girl's arrival there was no one to meet her. She was disturbed and anxious, but after some delay she was sent in a hack to her friend's home, which she reached safely. She sued for damages for "mental anguish." The lower

court sustained a demurrer to the complaint on the ground that she had suffered merely disappointment and annoyance and not mental anguish. In reversing the judgment the Supreme Court said that because the previous decisions in that state had involved telegrams concerning sickness or death it must not be inferred that it was only in such cases that a recovery for mental anguish could be permitted; that the feelings of an inexperienced girl who finds herself alone in a strange city at midnight may properly be found to be mental anguish.

The case of *Green* v. *W. U. Tel. Co.*, — N. C. —, 49 S. E. Rep. 171, arose out of the same transaction. Here Dr. Green sued for damages, including mental anguish resulting from a failure to notify him promptly of the non-delivery, thereby preventing him from making further attempts to provide for his daughter's comfort and safety. The company notified him of the non-delivery the next morning, causing him great distress, as he had not learned of his daughter's safe arrival. *Held*, that the facts were sufficient to entitle him to go to the jury on the question of mental anguish.

These cases raise again the much disputed question concerning the right to recover for mental anguish alone, a question on which there is sharp division and on which there has been earnest discussion. Many courts deny that there is a right, seem to regard the claim as an innovation and are overwhelmed by the conditions that they conjure up as certain to result from recognizing such a right. Just how these courts harmonize their position with cases such as libel, slander, malicious arrest and prosecution, false imprisonment and some others where a right to recover for mental anguish has long been recognized it is difficult to understand, though the attempt to differentiate is sometimes made. It may be that in the principal case these courts may see the advancing wave of that "flood of litigation" which they feared. And yet it would seem that a decision that would tend to protect a mere child from such an experience may be founded on sound legal principles, and very well suited to advance public policy and to require of quasi public servants a decent regard for their obligations. And to deny a right lest it might result in much litigation through asserting that right does not seem to be properly within the province of a court.

That the principal case is in harmony with the holdings in a steadily increasing number of courts cannot well be denied, Indiana being the only state to take what we regard as a backward step. *Tel. Co.* v. *Ferguson*, 157 Ind. 64.

The difficulty of determining the amount to be allowed, which may seem great in theory, has in practice proved far from insuperable, as no case has come to our attention where the verdict was excessive or extravagant. And it is difficult to see how even in theory it is more easy to compute the damages that should be allowed for mental suffering when accompanying a physical injury than when standing alone. And the real and ultimate purpose of making persons liable whose negligence causes mental anguish to another is not so much to get a money value on such anguish as to prevent the frequent recurrence of such offenses, and to establish the proposition that one has no more right to outrage the feelings of another than to injure

his person, or to destroy his property. And further, the contrary view has, in the judgment of able courts, required the conclusion that as there is no recovery for mental suffering alone there can be none for physical injury, though resulting proximately from the nervous shock. It would seem that there should be a clear distinction between mental anguish and nervous shock causing physical disease, but this distinction seems not to have been generally recognized by courts opposed to the doctrine of the principal case, and so we find cases which outrage every sense of justice, as *Spade* v. *Lynn & B. R. R. Co.*, 168 Mass. 285; *Mitchell* v. *Rochester Railroad*, 151 N. Y. 107; *Haile* v. *T. & P. R. Co.*, 23 U. S. App. 80, 60 Fed. Rep. 557; *Victorian Railways Com'rs.* v. *Coultas*, 13 App. Cas. 222; *Moore* v. *Chesapeake & Ohio R. Co.*,— Ky. —, 77 S. W. Rep. 361, and others that might be mentioned. These cases are a reproach to the common law, and if correct would force one to the conclusion that the common law is a crystallized and rigid thing, and that its adaptability to changing needs and conditions is an idle boast.

For further discussion and cases see 2 MICHIGAN LAW REVIEW, 150, 226, 411, 421, 642.